

## APPEAL NO. 010804

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 29, 2001. The hearing officer determined that: (1) the respondent's (claimant) injury sustained on \_\_\_\_\_, extended to and included an injury to the lumbar spine; and (2) the claimant's impairment rating (IR) is 14%. The appellant (carrier) appealed the hearing officer's extent-of-injury determination on sufficiency grounds, and requested the claimant's IR be reformed to exclude a rating for the lumbar spine. No response to the appeal was filed.

### DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury extended to and included his lumbar spine. The claimant asserted that he injured his lower back on \_\_\_\_\_, simultaneously with other injuries to his left knee and ankle. The claimant had the burden to prove that he sustained damage or harm to his lower back, arising out of and in the course and scope of his employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. There was conflicting evidence regarding this issue. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The Appeals Panel, an appellate-reviewing tribunal, will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The hearing officer did not err in determining that the claimant's IR is 14% as certified by the Texas Workers' Compensation Commission-appointed designated doctor. The carrier does not dispute that the designated doctor's report is entitled to presumptive weight on the issue of IR, but requests that the IR be reformed by removing the rating for the claimant's lumbar spine. In view of our decision above, we decline to reform the hearing officer's determination on this issue.

We affirm the decision and order of the hearing officer.

---

Michael B. McShane  
Appeals Judge

CONCUR:

---

Susan M. Kelley  
Appeals Judge

---

Philip F. O'Neill  
Appeals Judge